

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TYRONE PETERS,

Plaintiff,

-against-

CORRECTION OFFICER HUTTEL *et al.*,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 4/7/2023

No. 15-cv-9274 (NSR)

ORDER

NELSON S. ROMÁN, United States District Judge:

By way of background, a 6-day jury trial is scheduled to begin on May 15, 2023. The remaining claims to be tried before a jury is *pro se* Plaintiff Tyrone Peters’ (“Plaintiff”) Eighth Amendment excessive use of force claim against Correction Officer Daniel Huttel and failure to intervene claims against Correction Officer Jeffrey Erns and Sergeant Duane Malark. (*See* Joint Pretrial Statement, ECF No. 162.) The claims arise out of an incident that occurred on November 21, 2012, while Plaintiff was incarcerated at Green Haven Correctional Facility. (*See id.*)

The Court is in receipt of Plaintiff’s affirmation of service, which attaches a copy of his application for writ of habeas corpus *ad testificandum*, dated March 28, 2023.¹ (ECF No. 167.) In Plaintiff’s writ of habeas corpus *ad testificandum*, Plaintiff seeks to secure Timothy Scott (“Mr. Scott”) as a witness. (*See id.*) Plaintiff states that “Mr. Scott is a material witness whose testimony is paramount to Plaintiff’s case.” (*Id.*) In the alternative, Plaintiff requests to use Mr. Scott’s deposition at trial. (*Id.*)

Plaintiff states, and a search through the N.Y. State Department of Corrections and Community Supervision incarcerated lookup website confirms, that Mr. Scott (DIN #84A0829)

¹ As of the date of this memorandum endorsement, the Court has not yet received the actual application for writ of habeas corpus *ad testificandum*.

was released from Wende Correctional Facility on June 5, 2019 and is now out on parole. Plaintiff also states that his attempts to contact Mr. Scott have been unsuccessful.

“[A] district court has discretion to issue a writ of habeas corpus *ad testificandum* to compel a parolee's attendance when “necessary to bring him into court to testify or for trial.” *Davidson v. Desai*, 964 F.3d 122, 125 (2d Cir. 2020). In addition, “the party seeking a writ of habeas corpus *ad testificandum* bears the burden of demonstrating necessity.” *Id.* at 131. “[A] writ of habeas corpus *ad testificandum* is an “extraordinary measure” that should be taken only when alternatives are insufficient.” *Id.* at 131 (internal quotations and citations omitted).

The Court notes that the parties are currently briefing on their motions *in limine*, and based on Defendants’ opening papers, Defendants are seeking to preclude the deposition designation of Mr. Scott. (*See* ECF No. 164 at 9.)

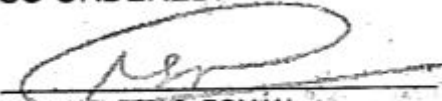
The Court DENIES without prejudice Plaintiff’s writ of habeas corpus *ad testificandum*. Plaintiff has not made the necessary showing that Mr. Scott would provide material testimony. *See United States v. Paracha*, No. 03-CR-1197 (SHS), 2018 WL 3238824, at *2 (S.D.N.Y. July 3, 2018) (denying a writ of habeas corpus *ad testificandum* because party failed to make a necessary showing that the witness would provide material testimony.”) Plaintiff merely states in his application that “Mr. Scott is a material witness whose testimony is paramount to Plaintiff’s case.” (*See* ECF No. 167.) However, the Court grants Plaintiff leave to submit a renewed application for a writ of habeas corpus *ad testificandum* that includes an affidavit that describes the testimony that Plaintiff seeks from Mr. Scott, an explanation of why his testimony is material, and Plaintiff’s efforts to contact Mr. Scott. Should Plaintiff wish to renew his request for a writ of habeas corpus *ad testificandum*, he must do so on or before April 20, 2023.

The Court RESERVES JUDGMENT on Plaintiff's request to designate Mr. Scott by deposition at trial, given that such issue is currently being briefed upon in the motions *in limine*.

The Clerk of the Court is kindly directed to mail a copy of this order to *pro se* Plaintiff and show service on the docket.

Dated: April 7, 2023
White Plains, NY

SO ORDERED:

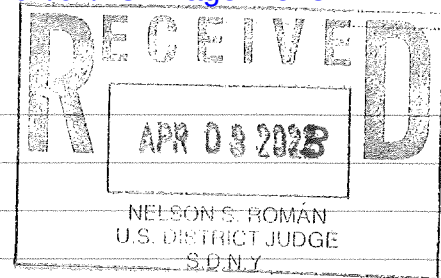


HON. NELSON S. ROMAN
UNITED STATES DISTRICT JUDGE

As: Pro Se Plaintiff Letter to the Court

Date: 4 / 3 / 2023

United States District Court
Southern District of New York



Tyrone Peters

Plaintiff-Petitioner,

Proof of Service
Affirmation of Service

- against -

Correction Officers Huttel,

Civil Case # 15-CV-9274 (WSR)

Defendants- Respondents,

State of New York)
County of Franklin) ss:

USDC SDNY
DOCUMENT
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I, Tyrone Peters #04A4361, makes the following affirmation under the penalties of perjury:-

- 1) I am the Plaintiff-Petitioner in the above-entitled action.
- 2) On March 28, 2023, I placed in a sealed post-paid wrapper a true and exact copy of the enclosed papers identified as (1) Writ of Habeas Corpus Ad Testificandum, by mailing a copy by regular mail by depositing the same in a mail box at the Upstate, C.F. for delivery to the U.S. mail address:-

1) U.S. District Court - SDNY
300 Quarropas St
White Plains, N.Y. 10601

2) NYS - Attorney General
28 Liberty St - 8th FL
New York, NY 10005

I, Tyrone Peters #04A4361, swears under the penalty of perjury that on March 28, 2023, I did mail the above mentioned documents and that the foregoing is true and correct.

Executed: March 28, 2023

Signed: Tyrone Peters #04A4361
TYRONE PETERS

Tyrone Peters #04A4361
Upstate Correctional Facility
P.O. Box 2001
Malone, New York 12953

March 28, 2023

Honorable Judge Nelson S. Roman
United States District Court
Southern District of New York
300 Quarropas St.
White Plains, N.Y. 10601

Re: Peters v Huttel, et.al - # Civil Case - 15.civ. 9274 (NSR) - Request
for Writ of Habeas Corpus Ad Testificandum

Dear Judge Nelson S. Roman,

On or about Friday, March 24, 2023, Plaintiff-Petitioner was advised by the Defense (AAG-Goltche) that the Plaintiff's main / material witness - Timothy Scott #84A0829, was released from Prison / DOCCS Facility.

Plaintiff has tried to get any and/or all information to contact Mr. Timothy Scott, but has been un-successful. Plaintiff suspects that Mr. Scott is still partially in the Custody of DOCCS - Division of Parole, as Mr. Scott should be on Parole.

Mr. Scotts is a material Witness, whose testimony is paramount to Plaintiff's case, but cannot be contacted by Plaintiff, a pro-se incarcerated Individual.

Of such, Plaintiff respectfully submits a Writ of Habeas Corpus Ad Testificandum to secure witness Timothy Scott. In an alternative, Plaintiff request to use Mr. Scott's Deposition at trial.

send to - c/o: NYS-AC
28 Liberty St
NY, NY 10005

Respectfully Submitted
T. Peters #04A4361
Plaintiff-Petitioner, Pro-se
Upstate C.F
P.O Box 2001
Malone, N.Y. ~~104~~ 12953

United States District Court
Southern District of New York

Tyrone Peters #04A4361

Plaintiff - Petitioner

- against -

Writ of Habeas Corpus
Ad Testificandum

Correction Officers Huttel, et al.

Civil Case # 15cv 9274

Defendants - Respondents

To: Honorable, Judge Nelson S. Roman

Petitioner, Tyrone Peters #04A4361, respectfully shows:-

Timothy Scott, who was imprisoned at the Wende Correctional Facility, at Alden, N.Y., is now on Parole in the custody and/or control of the New York State Board of Parole located at Department of Corrections and Community Supervision, Division of Parole and Department of Law, Board of Parole, Executive Department - Division of Parole, 97 Central Avenue, Albany, New York 12206, is a material witness for the Plaintiff in the above case that is set for trial on May 15, 2023.

Wherefore, Petitioner pray that the Clerk of this Court be instructed to issue a Writ of habeas Corpus ad testificandum to the NYS- DOCCS, Division of Parole and Department of Law to bring Timothy Scott #84A0829, before this Court to testify in this case and to be returned to NYS- DOCCS, Div. of Parole as soon as this case is disposed of.

Dated: March 28, 2023

Respectfully Submitted

Tyrone Peters #04A4361

clt: NYS Attorney General
28 Liberty St. 8th FL
NY, NY 10005

TYRONE PETERS #04A4361

Plaintiff - Petitioner, pro-se

Upstate C.F. Box 2001, Malone, NY 12953

UPSTATE CORRECTIONAL FACILITY

P.O. BOX 2001
MALONE, NEW YORK 12953

NAME: Tyrone Peters DIN: 04A4366

UPSTATE

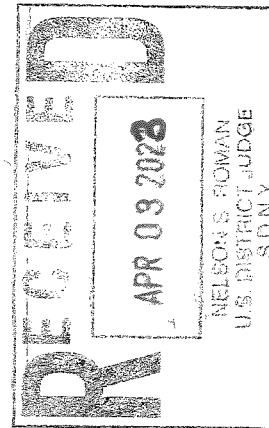
CORRECTIONAL

Upstate

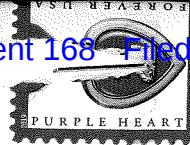


Correctional Facility

United States District Court
Southern District of New York
300 Quarropas St
White Plains, N.Y. 10601
Attn: Judge Nelson S. Roman
Civil Case - 15 cv 9274 (NSR)



Legal Mail



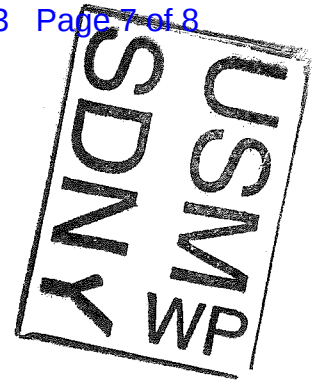
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NEW YORK STATE
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
INCARCERATED INDIVIDUAL CORRESPONDENCE PROGRAM

NAME: Tyrone Peters DIN: 04A4361